MONTANA LEGISLATIVE HISTORY

Chapter 560 1977

Bill H _____ S 32 Original bill & history ___C

H. Committee on	Judiciary		S. Committee on	Judiciary	
Hearing Date(s)	Mar 02	✓C	Hearing Date(s)	Jan 14	✓C
	Mar 25	✓C		Feb 10	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 25	✓C		Feb 10	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate Bill BILL NO. 37

INTRODUCED BY Turnage - Cooke

By request of Administrative Code Committee

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. Sections 2 through 4 may be cited as the "Legislative History Act".

Section 2. Statement of policy. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

Section 3. Delegation of authority defined. As used in section 4, "delegation of authority" means a statutory authorization to:

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(1) adopt rules implementing a statute; or

(2) license (as defined in 82-4202) an activity or establishment regulated by statute.

Section 4. Bills containing delegations of authority to state agencies -- limitations. (1) A bill introduced in a regular or special session of the legislature which contains a delegation of authority to a state agency shall be referred to an appropriate standing committee. The committee or a minority of the committee may not file a favorable report on the bill or on the bill as amended unless the report includes a statement, published in the journal with the report, which indicates the specific purpose for which authority is to be delegated and the committee members' intention as to how this authority will be exercised. If the authority delegated includes the power to adopt rules, the statement shall include an outline or summary of the rules to be adopted. A bill delegating authority to a state agency which is not accompanied by the statement may not be removed from the committee.

(2) A bill subject to this section, reported from a committee in the other house than that of its introduction or from a regular joint conference committee, may be supported by a committee statement which incorporates by reference in whole or part the statement of another committee which considered the bill. A bill subject to this

INTRODUCED BILL

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section reported from a free joint conference committee shall be accompanied by a statement from the joint committee which complies with subsection (1).

(3) So much of a statute as is enacted in contravention of this section, as indicated by the journals, is void.

Section 5. Section 82-4219, R.C.M. 1947, is amended to read as follows:

"82-4219. Declaratory judgments on validity or application of rules. ~~The validity or application of a~~ A rule may be ~~determined~~ declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute, as evidenced by documented legislative intent. If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in the preceding sentence, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute. The action may be brought in the

district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 14, 1977

The meeting of the Senate Committee on Judiciary was called to order by Chairman Turnage at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present at this meeting.

CONSIDERATION OF SENATE BILL 37:

Chairman Turnage placed Senate Bill 37 before the committee to be considered first and requested Roger Tippy, attorney for the Legislative Council, to make the initial presentation on this bill. S.B. 37 has to do with the Montana Administrative Code rules. Mr. Tippy explained to the committee that the Administrative Code Committee felt this bill was necessary because there is constant bickering about the intent of legislation.

Senator Roskie, District 21, co-sponsor of S.B. 37, spoke briefly on the bill, saying that the bill had been written because there should be more expression of intent on legislation.

At this time, Chairman Turnage told the committee, that it had been brought to the attention of the Rules Committee that this bill would place an additional burden on the Journal because of lengthy typing. Mr. Tippy said that this matter had been taken care of by the drafting of a revised rule for the Rules Committee regarding the typing of the legislative intent.

Steve Williams, attorney for the Anaconda Company, appeared in support of S.B. 37, stating that he believes there should be a controlling body over the many regulations of the state and that it should be the legislature. Mr. Williams proposed to add a new paragraph to S.B. 37 which would help people going before state agencies by cutting down the number of court actions necessary. (See attachment #1)

Bob Biggerstaff, representing the Montana Association of Conservation Districts, said that they support S.B. 37, as did Glen Drake who represents the League of Cities and Towns. Mr. Drake noted that cities and towns are greatly affected by administrative rules and, therefore, his association fully supports this bill.

There being no more proponents of S.B. 37, the Chairman called for the opponents to testify on this bill. The first opponent was Robert Lohn, staff attorney for Governor Judge, who said they support the statement of intent, but that they are afraid that it will lead to a new set of "laws of intent" and that the state has too many laws now, such as the Revised Codes of Montana and the Montana Administrative Codes.

The next opponent appearing was Mike Young, general counsel for the Department of Administration, who told the committee that what this bill is trying to do is actually already in the law. He further said that section 5 of S.B. 37 violates the law of exhausting administrative remedies.

Robert Corcoran, counsel with the Department of Revenue, an opponent of S.B. 37, told the committee that the problems the Department of Revenue have are enormous, because of the many different types of taxation laws they administer. Further, he stated that also because of this, the Department of Revenue writes a great amount of regulations -- more than any other state agency. He supported Mr. Lohn's testimony fully.

At this time, there beingno more witnesses on S.B. 37, the Chairman thanked those presenting testimony.

CONSIDERATION OF SENATE BILL 27:

Larry Weinberg, attorney with the Legislative Council, was next called upon to explain S.B. 27. However, it was suggested that there might be some witnesses on this bill present who wished to speak. Mike Pichette, Montana Democratic Party, a member of the advisory committee to the Commissioner on Campaign Finances and Practices, told the committee that they support S.B. 27. Chairman Turnage asked Mr. Pichette if he had any testimony to offer on S.B. 33 which is a companion bill. Mr. Pichette offered the committee two amendments for S.B. 33, one concerned section 1 and the other was on section 22. (See attachments 2 and 3) Sen. Roberts asked if the second amendment offered was in the nature of recodification. Mr. Pichette said that it was.

Marion Campbell of the Secretary of State's office asked that the committee note that, on page 6 of the green sheets attached to S.B. 33, section 23-47-53 is to be repealed. This section now prohibits advertising on election day. Upon reading the section referred to, Senators Regan and Warden expressed the belief that this was a substantive change. Mr. Weinberg said that he believes it is. At this time he was complimented by Mr. Pichette on the herculon job he had done on S.B. 27 and 33.

The committee then returned to consideration of S.B. 33 with Mr. Weinberg explaining it section by section. After he had reviewed section 2, the committee discussed the substantive changes being made -- which they believed necessary for good legislation -- and decided that this bill should not be brought out as a recodification bill.

Senator Towe moved to amend the title on page 1, line 4, after the word "GENERALLY" by inserting the words "AND SUBSTANTIVELY". The motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/14/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

Each day attach to minutes.

Amend Section 82-4204, R.C.M. 1947, to add a new paragraph providing as follows:

"Before engaging in further rule making, amending or repeal procedures authorized under this section, obtain an affirmative opinion from the Attorney General that the proposed rule to be adopted or amended or the proposed rule repeal is constitutional, both federal and statewise, and is not in conflict with existing statutes of the state of Montana. A complete and exact transcript of any proposed rule to be adopted, or of any proposed rule amendment, or a detailed statement of reasons for any proposed rule repeal shall be submitted to the Attorney General for review and opinion. Only those proposed rules, rule amendments or proposed rule repeals which bear an affirmative opinion by the Attorney General as to their constitutionality, both Federal and Montana, and absence of conflict with existing Montana statutes, which affirmation shall appear on all subsequent notices relevant to the proposed adoption, amendment or repeal, shall be eligible for further application of the provisions of this Section 82-4204, specifically (1) - (b) and (c), (2), (3), (4), (5) and (6)."

(Attachment #1)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 10, 1977

This is the second meeting of this committee to be held on this date in Room 415 of the State Capitol Building. The meeting was called to order on adjournment, 3:15 p.m., by the Chairman, Senator Turnage.

ROLL CALL:

All members of the committee were present for this meeting, but Senator Warden was excused to attend a ceremony in the Governor's office from 4:00 to 4:30 p.m..

EXECUTIVE SESSION

The committee met in executive session to take the following action on Senate Bills Nos.:

S.B.32 - Senator Warden moved DO NOT PASS. Motion carried unanimously.

S.B.37 - Senator Towe moved to amend page 2, section 4, subsection (1), lines 9 through 12, following "may" by striking "not file a favorable report on the bill or on the bill as amended unless the report includes a statement, published in the journal with the report," and inserting "append a statement to the committee report". Motion carried.

Senator Towe moved to amend page 2, section 4, subsection (1), line 16, following "statement" by striking "shall" and inserting "may". Motion carried.

Senator Towe moved to amend page 3, section 4, subsection (2), line 2, following line 1, by striking "shall" and inserting "may". Motion carried.

Senator Towe moved to amend page 3, section 4, subsection (2),line 3, following "(1)." by inserting "Such reports shall be published in the same manner as the journal.". Motion carried.

Senator Towe moved to amend page 3, section 4, subsection (3), lines 4 through 6, following line 3, by striking subsection (3) in its entirety. Motion carried.

Senator Towe then moved that Senate Bill 37 as amended DO PASS. Motion carried with Senators Roberts and Warden voting "No".

Senator Towe moved that the Statement of Intent be appended to this report. Motion carried.

law library under the justices. He went on to further explain the bill. The Board of Trustees consists of the chief justice and the justices of the supreme court.

JOHN NORTHEY, ATTORNEY:
This is mainly a recodification statute.

There were no other proponents, no opponents, and no discussion. The hearing closed on Senate Bill #92.

SENATOR TURNAGE commented that Senate Bill #230 does not apply to documents accepted with the Secretary of State.

The meeting recessed for a short time before reconvening for executive session while waiting for sponsors of the other bills who were to come in later.

9:10 a.m.

REPRESENTATIVE LORY called the meeting to order in the absence of CHAIRMAN SCULLY. The chairman had to leave to carry a bill in another committee, and VICE-CHAIRMAN TEAGUE also had to leave again to attend another hearing.

SENATE BILL #37:

SENATOR TURNAGE, DISTRICT #13:
This bill is intended to give some kind of legislative handle on the delegation of rule making authority. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as is evidenced by more and more rules, forms, orders, and licensing proceedings. This will give a clear indication of the legislature's intent as to how such discretion is to be exercised and the purpose for delegating the authority.

ROGER TIPPEY:
This is the last of the package of bills from the Administrative Code Committee to straighten out the laws caused with legislative rule-making. This bill dovetails with House Bill #77 which was passed a few weeks ago. The bill as amended earlier, does not have a way of publishing these statements of intent.

ROBERT LOHN, GOVERNORS OFFICE:
We support this bill. This is a good step in controlling the proliferation of rules. We would appreciate a statement of your will. Before that bill gets on the floor that statement would have to be there. I would propose an amendment. On line 22, section 5, following: "If the administrative code", insert: "and has made a written finding of the".

ROD GUDGEL, MNHA and MSPA:
I am representing two organizations and we support this legislation. This kind of legislation would clear up the question of what is the intent. On page 3, lines 22 and 23, the presumption here has been that this administrative code committee will be in existence.

There were no other proponents and no opponents.

REPRESENTATIVE RAMIREZ:
Is there any way that we could have control over the statement of intent.

A discussion followed about the intent, how it should be stated and what was actually intended, etc.

The hearing closed on House Bill #37.

THE HEARING OPENED ON HOUSE BILL #356:

SENATOR TURNAGE, DISTRICT #13:
This will provide for a statute of limitations for legal malpractice actions and clarify the effect of disabilities on statutes of limitatio: It expands the 2 years to 3. In no case may the action be commenced after 10 years except in special cases. He went on to explain the bill and detail the sections concerning persons under disabilities.

GREG MORGAN, STATE BAR OF MONTANA:
We asked Senator Turnage to introduce this. We do support the bill. We have extended the length of time in which an action can be filed, from 2 years to 3 years. The discovery states the statute of limitatic running in Montana. This bill was necessary because of the change in the legal malpractice.

REPRESENTATIVE HAND asked about the statute of limitations. Discussior followed.

MR. MORGAN:
We would like to have the action cut off in 10 years.

A general discussion followed about the cut-off time, and the original section that was deleted. The question was also raised as to the way i might pertain to juveniles.

MR. MORGAN stated that the purpose of the bill is the 10 year limit.

REPRESENTATIVE RAMIREZ:
Isn't this really an actuarial problem for the insurance companies?

Discussion followed about this, and that perhaps mentally disabled should be added to the section on disabilities.

The hearing closed on Senate Bill 356.

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 25, 1977

The House Judiciary Committee met for executive session at 9:00 a.m. Friday in room 436 of the Capitol Building, Helena, Montana. Chairma Scully presided. All members were present except Representatives Colburn and Kennerly.

SENATE BILL #333:
Representative Day reported from the water sub-committee. The bill was amended and as amended concurred in. The committee voted to accept the sub-committee report, with the vote unanimous.

SENATE BILL #359:
Representative Day reported from the water sub-committee this bill be amended and as amended concurred in. The committee voted to accep the sub-committee recommendation with the vote unanimous. (attached)

SENATE BILL #376:
Representative Day reported from the water sub-committee that this bill was tabled. The committee voted to accept the sub-committee report with the vote unanimous.

SENATE BILL #216:
Representative Day reported from the water sub-committee that the committee had reconsidered their action on this bill, which had been tabled and the resulting vote was "not concurred in". The Judiciary Committee voted to accept the sub-committee action and the vote was unanimous.

SENATE BILL #419:
Representative Courtney reported from the Judiciary sub-committee. He moved the sub-committee report "not concurred in". The motion carried with Representative Teague voting "no".

SENATE BILL #37:
Representative Ramirez moved the proposed amendments be adopted. The motion carried. He then moved "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL #413:
Representative Dussault reported from the sub-committee the proposed amendments. Representative Teague moved the committee adopt the proposed amendments except #1 and #11. Representative Dussault explain the amendments and what they would do. Representative Ramirez stated his objections to the two amendments. The motion to accept all except the two amendments carried with the vote unanimous.

Representative Hand moved the rejection of the two amendments after listening to the discussion. Representative Dussault stated that

SENATE BILL NO. 37

INTRODUCED BY TURNAGE, ROSKIE

BY REQUEST OF ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(1) adopt rules implementing a statute; or

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~~(2) A bill subject to this section, reported from a committee in the other house than that of its introduction or from a regular joint conference committee, may be~~

REFERENCE BILL

~~supported by a committee statement which incorporates by reference in whole or part the statement of another committee which considered the bill. A bill subject to this section reported from a free joint conference committee shall~~ MAY be accompanied by a statement from the joint committee which complies with subsection (1). ~~SUCH REPORTS SHALL BE PUBLISHED IN THE SAME MANNER AS THE JOURNAL.~~

(2) UNLESS AN ACT CONTAINS A PREAMBLE IN ACCORDANCE WITH SUBSECTION (1), ANY DELEGATION OF AUTHORITY IN THE ACT IS VOID.

~~(3) So much of a statute as is enacted in contravention of this section, as indicated by the journals, is void.~~

Section 5. Section 82-4219, R.C.M. 1947, is amended to read as follows:

"82-4219. Declaratory judgments on validity or application of rules. ~~The validity or application of a~~ A rule may be ~~determined~~ declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute, ~~as evidenced by~~

~~documented legislative intent.~~ If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in the preceding sentence, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question."

-End-